MONTANA LEGISLATIVE HISTORY

Chapter 124 19 97

Bill H _____ S 125 Original bill & history X C

H. Committee on ~~SE~~ Taxation			S. Committee on State Admin.		
Hearing Date(s)	2/5	X C	Hearing Date(s)	1/16	X C
& EXEC ACTION		C	EXEC. ACTION	1/23	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes X No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved March 20, 1997

CHAPTER NO. 124

[SB 125]

AN ACT ADOPTING THE UNIFORM UNCLAIMED PROPERTY ACT; AMENDING SECTIONS 17-8-303 AND 72-14-102, MCA; REPEALING SECTIONS 70-9-101, 70-9-102, 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204, 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304, 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315, AND 70-9-316, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 29] may be cited as the "Uniform Unclaimed Property Act".

Section 2. Definitions. In [sections 1 through 29], unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to [sections 1 through 29].

(7) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable

4/08	3RD READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	49	1
	HOUSE		
4/11	2ND READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	91	3
4/12	3RD READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	84	12
4/18	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 370		
	EFFECTIVE DATE: 04/23/97		

SB 125 INTRODUCED BY CHRISTIAENS *LC0346 DRAFTER: PETESCH*

ADOPT THE UNIFORM UNCLAIMED PROPERTY ACT

BY REQUEST OF DEPARTMENT OF REVENUE

1/03	INTRODUCED		
1/06	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/07	REFERRED TO STATE ADMINISTRATION		
1/16	HEARING		
1/17	FISCAL NOTE RECEIVED		
1/17	FISCAL NOTE PRINTED		
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	41	9
1/28	3RD READING PASSED	45	4
	TRANSMITTED TO HOUSE		
1/29	FIRST READING		
1/29	REFERRED TO TAXATION		
2/05	HEARING		
2/06	COMMITTEE REPORT—BILL CONCURRED		
3/10	2ND READING CONCURRED	82	16
3/11	3RD READING CONCURRED	87	12
	RETURNED TO SENATE		
3/13	SIGNED BY PRESIDENT		
3/13	SIGNED BY SPEAKER		
3/14	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 124		
	EFFECTIVE DATE: 07/01/97		

SB 126 INTRODUCED BY NELSON *LC0773 DRAFTER: ERICKSON*

INCREASE THE MAXIMUM AMOUNT OF AN EDUCATIONAL DEBT PAYMENT THAT A RURAL PHYSICIAN MAY RECEIVE FROM THE BOARD OF REGENTS

BY REQUEST OF BOARD OF REGENTS

1/03	INTRODUCED		
1/06	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/07	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/17	HEARING		
1/27	COMMITTEE REPORT—BILL PASSED		
1/28	2ND READING PASSED	49	0

	TRANSMITTED TO HOUSE		
1/29	3RD READING PASSED	48	0
1/30	FIRST READING		
1/30	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/05	HEARING		
2/07	COMMITTEE REPORT—BILL CONCURRED		
3/05	2ND READING CONCURRED	88	10
3/06	3RD READING CONCURRED	89	11
	RETURNED TO SENATE		
3/10	SIGNED BY PRESIDENT		
3/12	SIGNED BY SPEAKER		
3/13	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 89		
	EFFECTIVE DATE: 10/01/97		

SB 127 INTRODUCED BY COLE *LC0183 DRAFTER: MARTIN*

CLARIFY THAT THE WHOLESALE VALUE OF AGRICULTURAL IMPLEMENTS AND MACHINERY FOR PROPERTY TAX PURPOSES IS THE AVERAGE WHOLESALE VALUE

BY REQUEST OF DEPARTMENT OF REVENUE

1/03	INTRODUCED		
1/07	FIRST READING		
1/07	REFERRED TO TAXATION		
1/13	HEARING		
1/13	FISCAL NOTE REQUESTED		
1/16	FISCAL NOTE RECEIVED		
1/18	FISCAL NOTE PRINTED		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	46	0
1/27	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
1/28	FIRST READING		
1/28	REFERRED TO TAXATION		
2/11	HEARING		
2/12	COMMITTEE REPORT—BILL CONCURRED		
4/08	2ND READING CONCURRED	96	3
4/09	3RD READING CONCURRED	98	1
	RETURNED TO SENATE		
4/14	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 299		
	EFFECTIVE DATE: 04/17/97		

SB 128 INTRODUCED BY HARGROVE, ET AL. *LC0384 DRAFTER: NISS*

PROVIDE FOR THE REGULATION OF HEALTH INSURANCE CARRIERS WHO OFFER MANAGED CARE PLANS

BY REQUEST OF GOVERNOR & STATE AUDITOR

1/03	INTRODUCED
1/06	FISCAL NOTE REQUESTED
1/07	FIRST READING
1/07	REFERRED TO BUSINESS & INDUSTRY
1/08	REREFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
1/13	FISCAL NOTE RECEIVED
1/13	FISCAL NOTE PRINTED

SENATE BILL NO. 125

INTRODUCED BY CHRISTIAENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM UNCLAIMED PROPERTY ACT; AMENDING SECTIONS 17-8-303 AND 72-14-102, MCA; REPEALING SECTIONS 70-9-101, 70-9-102, 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204, 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304, 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315, AND 70-9-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 29] may be cited as the "Uniform Unclaimed Property Act".

NEW SECTION. **Section 2. Definitions.** In [sections 1 through 29], unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner

property that is subject to [sections 1 through 29].

(7) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

(10) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) "Owner" means a person who has a legal or equitable interest in property subject to [sections 1 through 29] or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(13) "Property" means tangible property described in [section 4] or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government,

governmental subdivision, agency, or instrumentality, and all income or increments from the property. The term includes property that is referred to as or evidenced by:

(a) money, check, draft, deposit, interest, or dividend;

(b) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(c) stock or other evidence of ownership of an interest in a business association or financial organization;

(d) bond, debenture, note, or other evidence of indebtedness;

(e) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(f) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(g) an amount distributable from a trust or custodial fund that is established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

(16) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

NEW SECTION. **Section 3. Presumptions of abandonment.** (1) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

(c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:

(i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the apparent owner; or

(ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(d) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;

(e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(f) money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value;

(h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(i) property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

(j) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

(k) property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

(l) wages or other compensation for personal services, 1 year after the compensation becomes payable;

(m) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

(n) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(o) all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) the making of a deposit to or withdrawal from a bank account; and

(d) the payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the

insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of [sections 1 through 29] notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

NEW SECTION. **Section 4. Contents of safe deposit box or other safekeeping depository.** Tangible property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law are presumed abandoned if the property remains unclaimed by the owner for more than 5 years after expiration of the lease or rental period on the box or other depository.

NEW SECTION. **Section 5. Rules for taking custody.** Except as otherwise provided in [sections 1 through 29] or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

(1) the last-known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last-known address of the person entitled to the property is in this state;

(3) the records of the holder do not reflect the last-known address of the apparent owner and it is established that:

(a) the last-known address of the person entitled to the property is in this state; or

(b) the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property;

(4) the last-known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(5) the last-known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision,

agency, or instrumentality of this state;

(6) the transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last-known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order purchased in this state or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

NEW SECTION. **Section 6. Dormancy charge.** A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

NEW SECTION. **Section 7. Burden of proof as to property evidenced by record of check or draft.** A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder that is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

NEW SECTION. **Section 8. Report of abandoned property.** (1) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(2) The report must be verified and must contain:

(a) a description of the property;

(b) except with respect to a traveler's check or money order, the name, if known, and last-known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of $50 or more;

(c) an aggregated amount of items valued under $50 each;

(d) in the case of an amount of $50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last-known address of the annuitant or insured and of the beneficiary;

(e) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator and any amounts owing to the holder;

(f) the date, if any, on which the property became payable, demandable, or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(g) other information that the administrator by rule prescribes as necessary for the administration of [sections 1 through 29].

(3) If a holder of property presumed abandoned is a successor to another person that previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(4) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(5) The holder of property that is presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to [sections 1 through 29] if:

(a) the holder has in its records an address for the apparent owner that the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by a statute of limitations; and

(c) the value of the property is $50 or more.

(6) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(7) The holder of property presumed abandoned shall file with the report an affidavit stating that

the holder has complied with subsection (5).

NEW SECTION. **Section 9. Payment or delivery of abandoned property.** (1) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by [section 8], the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed; however, if the property is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until 60 days after filing the report required by [section 8].

(2) If the property reported to the administrator is a security or security entitlement under Title 30, chapter 8, the administrator is an appropriate person to make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Title 30, chapter 8.

(3) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to 30-8-408, but an indemnity bond is not required.

(4) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with [section 11].

NEW SECTION. **Section 10. Notice and publication of lists of abandoned property.** (1) The administrator shall publish a notice not later than November 30 of the year following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the county of this state in which is located the last-known address of any person named in the notice. If a holder does not report an address for the apparent owner or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the

attention of the apparent owner of the unclaimed property. The form must contain:

(a) the name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(b) the last-known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(c) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(d) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(2) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than $50 or information concerning a traveler's check, money order, or similar instrument.

NEW SECTION. **Section 11. Custody by state -- recovery by holder -- defense of holder.** (1) In this section, payment or delivery is made in "good faith" if:

(a) payment or delivery was made in a reasonable attempt to comply with [sections 1 through 29];

(b) the holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(c) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(2) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder that pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(3) A holder that has paid money to the administrator pursuant to [sections 1 through 29] may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and

that payment was made to a person that reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under [section 19].

(4) A holder that has delivered property other than money to the administrator pursuant to [sections 1 through 29] may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(5) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(6) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(7) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

NEW SECTION. **Section 12. Public sale of abandoned property.** (1) Except as otherwise provided in this section, the administrator, within 3 years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state, which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least 3 weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time

of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of 3 years after their delivery to the administrator, a person making a claim under [sections 1 through 29] before the end of the 3-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under [sections 1 through 29] after the expiration of the 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator.

(3) A purchaser of property at a sale conducted by the administrator pursuant to [sections 1 through 29] takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

NEW SECTION. **Section 13. Deposit of funds.** (1) Except as otherwise provided by this section, the administrator shall promptly deposit in the general fund of this state all funds received under [sections 1 through 29], including the proceeds from the sale of abandoned property under [section 12]. The administrator shall retain in a separate trust fund at least $100,000 from which the administrator shall pay claims allowed. The administrator shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the property and the name and last-known address of each insured person or annuitant and beneficiary and, with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

(2) Before making a deposit to the credit of the general fund, the administrator may deduct:

(a) expenses of sale of abandoned property;

(b) costs of mailing and publication in connection with abandoned property;

(c) reasonable service charges; and

(d) expenses incurred in examining records of holders of property and in collecting the property from those holders.

NEW SECTION. **Section 14. Claim of another state to recover property.** (1) After property has been paid or delivered to the administrator under [sections 1 through 29], another state may recover the property if:

(a) the property was paid or delivered to the custody of this state because the records of the holder did not reflect a last-known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state, and under the laws of that state, the property has escheated or become subject to a claim of abandonment by that state;

(b) the property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(c) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last-known location of the owner within the borders of another state, and under the laws of that state, the property has escheated or become subject to a claim of abandonment by that state;

(d) the property was subjected to custody by this state under [section 5(6)], and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(e) the property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this state under [section 5(7)], and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(2) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (1).

(3) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

NEW SECTION. **Section 15. Filing claim with administrator -- handling of claims**

by administrator. (1) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(2) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under [section 16].

(3) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest, or other increment to which the claimant is entitled under [section 12].

(4) A holder that pays the owner for property that has been delivered to the state and that, if claimed from the administrator by the owner, would be subject to an increment under [section 12] may recover from the administrator the amount of the increment.

NEW SECTION. **Section 16. Action to establish claim.** A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the district court, naming the administrator as a defendant. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney fees.

NEW SECTION. **Section 17. Election to take payment or delivery.** (1) The administrator may decline to receive property reported under [sections 1 through 29] that the administrator considers to have a value less than the expenses of notice and sale.

(2) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property that is delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under [sections 1 through 29].

NEW SECTION. **Section 18. Destruction or disposition of property having no substantial commercial value -- immunity from liability.** If the administrator determines

after investigation that property delivered under [sections 1 through 29] has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section except for intentional misconduct or malfeasance.

NEW SECTION. **Section 19. Periods of limitation.** (1) The expiration, before or after [the effective date of this act], of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by [sections 1 through 29].

(2) An action or proceeding may not be maintained by the administrator to enforce [sections 1 through 29] in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

NEW SECTION. **Section 20. Requests for reports and examination of records.** (1) The administrator may require a person that has not filed a report or a person that the administrator believes has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under [sections 1 through 29], describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(2) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with [sections 1 through 29]. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under [sections 1 through 29]. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(3) The administrator, at reasonable times, may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial organization that is the

holder of property presumed abandoned if the administrator has given the notice required by subsection (2) to both the association or organization and the agent at least 90 days before the examination.

(4) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(a) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce [sections 1 through 29];

(b) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(c) produced pursuant to subpoena or court order; or

(d) disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection (4) if the other state is bound to keep the documents and papers confidential.

(5) If an examination of the records of a person results in the disclosure of property reportable under [sections 1 through 29], the administrator may assess the cost of the examination against the holder at the rate of $200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (3) may be assessed only against the business association or financial organization.

(6) If, after [the effective date of this act], a holder does not maintain the records required by [section 21] and the records of the holder available for the periods subject to [sections 1 through 29] are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

NEW SECTION. **Section 21. Retention of records.** (1) Except as otherwise provided in subsection (2), a holder required to file a report under [section 8] shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report unless a shorter period is provided by rule of the administrator.

(2) A business association or financial organization that sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for 3 years after the holder files the report.

NEW SECTION. **Section 22. Enforcement.** The administrator may maintain an action in this or another state to enforce [sections 1 through 29]. The court may award reasonable attorney fees to the prevailing party.

NEW SECTION. **Section 23. Interstate agreements and cooperation -- joint and reciprocal actions with other states.** (1) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in [section 20]. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(2) The administrator may join with another state to seek enforcement of [sections 1 through 29] against any person that is or may be holding property reportable under [sections 1 through 29].

(3) At the request of another state, the attorney general of this state may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(4) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. With the approval of the attorney general of this state, the administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney fees may be paid from money received under [sections 1 through 29]. The administrator may agree to pay expenses and attorney fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney fees paid under this subsection may not be deducted from the amount

that is subject to the claim by the owner under [sections 1 through 29].

NEW SECTION. **Section 24. Interest and penalties.** (1) A holder that fails to report, pay, or deliver property within the time prescribed by [sections 1 through 29] shall pay to the administrator interest at the annual rate of 12% on the property or value of the property from the date the property should have been reported, paid, or delivered.

(2) Except as otherwise provided in subsection (3), a holder that fails to report, pay, or deliver property within the time prescribed by [sections 1 through 29], or fails to perform other duties imposed by [sections 1 through 29], shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $200 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of $5,000.

(3) A holder that willfully fails to report, pay, or deliver property within the time prescribed by [sections 1 through 29], or willfully fails to perform other duties imposed by [sections 1 through 29], shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $1,000 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of $25,000, plus 25% of the value of any property that should have been but was not reported.

(4) A holder that makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $1,000 for each day from the date a report under [sections 1 through 29] was due, up to a maximum of $25,000, plus 25% of the value of any property that should have been but was not reported.

(5) The administrator for good cause may waive, in whole or in part, interest under subsection (1) and penalties under subsections (2) and (3) and shall waive penalties if the holder acted in good faith and without negligence.

NEW SECTION. **Section 25. Agreement to locate property.** (1) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of

a claim.

(2) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner, and states the value of the property before and after the fee or other compensation has been deducted.

(3) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(4) An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney fees to an owner who prevails in the action.

(5) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.

NEW SECTION. **Section 26. Foreign transactions.** [Sections 1 through 29] do not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

NEW SECTION. **Section 27. Transitional provisions.** (1) An initial report filed under [sections 1 through 29] for property that was not required to be reported before [the effective date of this act] but that is subject to [sections 1 through 29] must include all items of property that would have been presumed abandoned during the 10-year period next preceding [the effective date of this act] as if [sections 1 through 29] had been in effect during that period.

(2) [Sections 1 through 29] do not relieve a holder of a duty that arose before [the effective date of this act] to report, pay, or deliver property. Except as otherwise provided in [section 19(2)], a holder that did not comply with the law in effect before [the effective date of this act] is subject to the applicable provisions for enforcement and penalties that then existed, which are continued in effect for the purpose of this section.

NEW SECTION. **Section 28. Rules.** The administrator may adopt, pursuant to Title 2, chapter 4, rules necessary to carry out [sections 1 through 29].

NEW SECTION. **Section 29. Uniformity of application and construction.** [Sections 1 through 29] must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of [sections 1 through 29] among states enacting it.

Section 30. Section 17-8-303, MCA, is amended to read:

"**17-8-303. Warrants -- presentation and cancellation.** (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state treasury must be presented for payment within 6 months after the date of issue.

(b) Warrants issued for the department of public health and human services that are funded to any extent with federal money must be presented for payment within 180 days after the date of issue.

(2) If the payee or legal holder of any warrant fails to present it for payment within the time specified in subsection (1), the state treasurer shall record the warrant as canceled and the amount must be credited to a separate expendable trust fund account administered by the treasurer. If the payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment within 4 years from the date of issue, the state treasurer may, upon proper showing by affidavit, issue a new warrant in lieu of the canceled warrant.

(3) Three years and 6 months after cancellation, the warrant must be classed as unclaimed property subject to the provisions of ~~Title 70, chapter 9, parts 1 through 3~~ [sections 1 through 29]. If the payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment, the presentation must be to the department of revenue as provided in ~~70-9-310~~ [section 15]."

Section 31. Section 72-14-102, MCA, is amended to read:

"**72-14-102. When title to escheated property vests in state.** (1) Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, the title vests in the state of Montana immediately upon the death of the owner without an inquest or other similar proceeding and there is no presumption that the owner died leaving heirs or next of kin.

(2) This chapter does not apply to any rural electric or telephone cooperative organized under Title 35, chapter 18, if the board of trustees of the cooperative has acted to retain patronage refunds that are made by the cooperative to a member or former member and that remain unclaimed for 5 years~~, as provided in 70-9-203~~."

NEW SECTION. **Section 32. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 33. Two-thirds vote.** Because [section 18] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house for passage.

NEW SECTION. **Section 34. Repealer.** Sections 70-9-101, 70-9-102, 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204, 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304, 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315, and 70-9-316, MCA, are repealed.

NEW SECTION. **Section 35. Effective date.** [This act] is effective July 1, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0125, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill adopting the Uniform Unclaimed Property Act.

ASSUMPTIONS:

1. Under current law monies received from unclaimed property are deposited in the common school trust fund (CSTF). The proposed law requires that monies received from unclaimed property be switched to the general fund.
2. The net funds received from unclaimed property will be $1.075 million in both FY98 and FY99. This amount is the same under current law and the proposal, and is based upon a five-year average.
3. Annual interest income on the $1,075,000 is estimated to be $65,000 (assuming 6% rate).
4. Under current law, 95% of the of the earnings of education trust fund are transferred annually to the general fund, and expended as appropriated. In FY98 the 95% figure is $62,000, but in FY99 it doubles because the principle has been allocated for two years.

FISCAL IMPACT:

	FY98 Difference	FY99 Difference
Revenues:		
Unclaimed Prop.-General fund	$ 1,075,000	$ 1,075,000
Unclaimed Prop.- CSTF	(1,075,000)	(1,075,000)
Interest transfer -General fund	(62,000)	(124,000)
Interest income- CSTF	(65,000)	(130,000)
Total	(127,000)	(254,000)
Net Impact On Fund Balance:		
General fund (01)	$ 1,013,000	$ 951,000
Common School Trust fund (09)	(1,075,000)	(1,075,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

In approximately 20 years after the effective date, the loss of interest income that would be transferred under current law would equal the amount of unclaimed property transferred to the general fund under the proposal.

Dave Lewis 1-17-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Chris Christiaens 1/17/97

CHRIS CHRISTIAENS, SPONSOR DATE

Fiscal Note for SB0125, as introduced

SB 125

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on January 16, 1997, at 10:00 a.m., in Room 331.

ROLL CALL

Members Present:
Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 125, 1/13/97;
SB 131, 1/13/97
Executive Action: SB 19 DPAA; SB 94 DP;
SB 92 DPAA

HEARING ON SB 131

Sponsor: **SEN. KEN MESAROS, SD 25, CASCADE**

Proponents: **John Loucks, School Administrators of Montana**

Opponents: **None**

Opening Statement by Sponsor:

SEN. KEN MESAROS, SD 25, CASCADE, stated that SB 131 proposes a minor change which would increase the number of acres that the Board of Land Commissioners may sell or lease to a school district for use as a school site. He explained that he is presenting this bill for the purposes of a particular school district, noting that he is sure there may be others which would

benefit, and indicated that this school is in dire need of expansion, that they are land-locked, and have identified some State land as a possible site for future construction. He pointed out that this change in statute would not mandate that the Board of Land Commissioners approve this type of transaction, that it simply offers the option and increases the amount of acres which can be made available.

SEN. MESAROS indicated that he felt 25 acres was realistic for a school site, that, in determining that number, he took into account the Educational Facilities Program and the needs and recommendations from the school district, noting that they had recommended 30 to 35 acres.

Proponents' Testimony:

John Loucks, School Administrators of Montana, reported that they requested an increase in acreage as a result of a feasibility study which recommended a building site consisting of 30 to 35 acres for this particular school district's educational facility, that the new facility should occupy an area consisting of enough acreage to insure future expansion capability, as well as provide for parking, bus barns, recreational facilities and vocational buildings.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SEN. MESAROS stated that he thinks this is a reasonable request, that he believes this is more realistic than the present 10 acres, and he hopes the Committee will make a favorable recommendation.

HEARING ON SB 125

Sponsor: **SEN. CHRIS CHRISTIAENS, SD 23, GREAT FALLS**

Proponents: **Neil Peterson, Bureau Chief, Income and Miscellaneous Tax Division, Montana Department of Revenue**
John Cadby, Montana Bankers Association
Bob Pyfer, Senior Vice President, Montana Credit Unions League
Joan Mandeville, Montana Telephone Association

Opponents: None

Informational Testimony: **John North, Montana Department of Environmental Quality**

Opening Statement by Sponsor:

SEN. CHRIS CHRISTIAENS, SD 23, GREAT FALLS reported that SB 125 was requested by the Department of Revenue to adopt the Uniform Unclaimed Property Act, and bring it into compliance with the 1995 Uniform Unclaimed Property Act. He explained that the purpose of unclaimed property laws are to reunite owners with property that is rightfully theirs, to protect the holders of abandoned property from subsequent claims after the property is transferred to the State, and to insure that any economic windfall resulting from unclaimed property will benefit the State and its citizens.

He indicated that, when eligible property is determined to be unclaimed, the holder reports and transfers that property to the State's Unclaimed Property Administrator, who attempts to notify the owners. He reported that cash is transferred to the State General Fund, that non-cash items are held for a period of time and then sold, and the Administrator maintains a fund from which owners can make claims for payment, adding that this property is held in perpetuity for the owner or the owner's heirs.

SEN. CHRISTIAENS pointed out that the 1995 Uniform Unclaimed Property Act retains the basics of this procedure, but will update, modernize and substantially improve the laws. He reported that, when more than one state is involved, the Uniform Unclaimed Property Act provides specific rules regarding which state is entitled to custody of unclaimed property, to meet the test of the 1993 U.S. Supreme Court decision in Delaware vs. New York. He stated that it retains the basic five-year time period for presuming property has been abandoned, but revises the time periods for certain types of property, explaining that shorter time periods would prevent losses of assets which might otherwise dissipate. He added that it provides a general rule for determining what constitutes unclaimed property, further defines what constitutes communications between an owner and a holder, and also establishes a general rule regarding dormancy charges for all types of property. He pointed out that this will also limit heir-finder agreements, that no person can enter agreements to charge a fee for finding unclaimed property less than two years from the time the property is transferred to the Unclaimed Property Administrator.

He reported that the Uniform Unclaimed Property Act will significantly increase interest and penalties for non-compliance. He stated that the interest, at 12%, is not generally waivable by the State, and penalties would be increased to $5,000, for inadvertent failure to report unclaimed property, and up to $25,000 plus 25% of the value of the property for willful failure to report property, adding that the State would also be allowed to examine the books and records of stock transfer agents, paying agents, and other third party administrators. He indicated that the State's publication requirements would be reduced to once a year, and that the term "holder" would be redefined as the person

actually obligated to make payment to the owner, and that mineral rights will be included as property subject to the Act. He further stated that this bill will change where unclaimed property funds are deposited, from the Public School Trust Fund, to the General Fund, pointing out that all of Montana citizens will benefit from the deposit of unclaimed property funds into the General Fund.

SEN. CHRISTIAENS asked that the Committee act favorably on this bill, stating that it represents sound public policy by providing that property separated from Montana owners would be safely held until it is claimed by the owner or the owner's heirs. He indicated that a number of people wish to testify on this bill, adding that he believed there would be some amendments proposed.

Proponents' Testimony:

Neil Peterson, Bureau Chief, Income and Miscellaneous Tax Division, Montana Department of Revenue, reported that the Abandoned Property Program consists of 2 FTE who process reports from holders and claims from owners, and advertise unclaimed property. He further reported that, in FY 1996, they received approximately 1,200 reports from holders of property valued at approximately $1.8 million, and received another $220,000 from the State through uncashed stale-dated warrants. He stated that, currently, their records indicate 4,500 different holders have remitted abandoned property to the State, that, in FY 1996, they had 1404 claims from owners, and refunded almost $900,000 to owners, adding that they are currently holding property for approximately 150,000 different owners.

He explained that Sections 5 and 14 of the bill deal with which state is entitled to unclaimed property, and provide specific rules to comply with the Supreme Court decisions in Texas vs. New Jersey and Delaware vs. New York. He described the procedures as a two-step process which requires the property to be held by the state of the owner's last known address, however, if there is no last known address, the property will be held by the state of commercial domicile of the holder. He added that the next major function of the Act, contained in Sections 3 and 4, deals with dormancy periods. He distributed copies of a chart showing the proposed changes in dormancy periods (**EXHIBIT 1**), and explained the changes. With regard to money orders, he reported that they heard testimony from a number of people who felt that there is a good chance people will cash money orders after the five-year period, so it is being extended to seven years. He explained that the change regarding money or credits owed to a customer is to prevent dissipation of assets, and then reported that the dormancy period on gift certificates would be three years, noting that gift certificates which are redeemable for merchandise are turned over at 60% of their value, instead of 100% of their value, as required on gift certificates redeemable for cash. He continued to explain other changes in dormancy periods, and noted

that they are not extensive, that most property will retain the five-year dormancy period.

Mr. Peterson then pointed out that another major provision of Section 3 outlines what constitutes unclaimed property, and what type of communications need to take place between the owner and the holder in determining whether or not property has been abandoned. He indicated that the 1981 Act focused primarily on written communication between the owner and holder of property, but the 1995 Act takes into account other types of communications, as long as a record is maintained by the holder, noting that this would include electronic communications.

He pointed out that the Uniform Unclaimed Property Act also provides for increased audits for the Administrator, in Section 20, and increases enforcement, in Section 24, which deals with penalty and interest. He explained that the audit provisions allow the Administrator to require a verified report or self-audit from the holder, instead of having to conduct a full audit, that the holder can complete and return a prescribed set of forms, a self-audit package, that would be less intrusive than a full audit. He added that it will also allow the Administrator to audit the records of an agent of the holder who may maintain records of the holder.

He then indicated that the prior Act contained only criminal penalties, which were rarely or never enforced, and that the 1995 Act changes those to civil penalties, providing for a penalty of $200 a day, up to a maximum of $5,000, for inadvertent failure to turn unclaimed property over to the State, and $1,000 a day up to a maximum of $25,000, plus 25% of the value of the property, for willfully failing to turn property over to the State. He pointed out that the 1995 Act also allows the Administrator to waive penalty and interest, when it can be shown that failure to turn the property over by the holder was due to good cause and not neglect, noting that this is common practice by administrators, but had not been previously spelled out in the Act

He reported that the 1981 Act did not address heir-finder agreements, but the 1995 Act prohibits agreements entered into less than 24 months after the date the property was paid or delivered to the Administrator. He explained that the purpose of this is to give the owners the opportunity to be reunited with their property without paying a finder's fee, noting that, in some states, owners were being contacted before the state had a chance to advertise.

Mr. Peterson reported that the 1981 Act dealt with service charges only on certain types of property, but that the 1995 Act applies this dormancy charge limitation to all types of property, stating that dormancy charges can not be unconscionable, that there must be a written contract between the owner and the holder to impose these charges, and they must be consistently imposed. He explained that, previously, with certain types of property,

holders would deduct dormancy charges ranging from a few percent to a substantial percentage of the value of the property, right before it was turned over to the State, which was a way to limit how much money was transferred to the State, and that these dormancy charge limitations are designed to combat that practice.

He further indicated that, under this bill, the publication requirement would be reduced to once a year, noting that they currently advertise twice a year and plan to continue that, if not increase it, but that this would simply reduce that requirement to once a year. He added that Section 8 will change reporting dates for some businesses, specifically banking and financial organizations, and cooperatives, from May 1st to November 1st, but that life insurance companies will still report May 1st.

He explained that funds would be deposited to the General Fund, rather than the Public School Trust Fund, as previously set out in the Act, to provide a non-earmarked revenue source to fund state-wide priorities, rather than just education.

Mr. Peterson then indicated that Section 18 provides that, if the Administrator, through good faith, determines a particular item of property has no value and destroys that property, the Administrator is indemnified from any subsequent action by an owner, and pointed out that, because of this indemnification clause, the bill would require a two-thirds vote in both houses.

He summed up his comments by stating that SB 125 will reorganize the sections and make them more readable, that it will modernize the Act, and expand the definitions of property. He distributed copies of written testimony from **Mr. Robert Sullivan, retired, Missoula, Montana**, (**EXHIBIT 2**) and from **Mr. William Johnson, President, National Association of Unclaimed Property Administrators**, (**EXHIBIT 3**). He then offered an amendment (**EXHIBIT 4**) to address an exemption for patronage refunds owed to a member of a rural electric or telephone cooperative, that they are not required to be turned over as abandoned property, providing they are used for educational purposes. He indicated that this exemption was passed in the 1993 Legislature, but was overlooked in the drafting of this bill.

{Tape: 1; Side: A; Approx. Time: 10:33 a.m.; Comments: None.}

John Cadby, Montana Bankers Association, indicated that they support the bill, but would like to offer a couple of amendments the Committee might wish to consider. He gave a history of the Uniform Unclaimed Property Act, which began in 1955, and stated that the 1981 Act was never officially adopted by the Montana Legislature. He pointed out that Section 11 of the Uniform Code has been left out of SB 125, explaining that Section 11 provides for interest or dividends to be paid on abandoned property held by the State, if it is claimed within ten years. He noted that

this may have been an oversight, and he wanted to bring it to the Committee's attention.

He remarked that the penalties set out on page 18 are pretty stiff, although they have been changed from criminal to civil penalties. He pointed out that the penalty is being increased for inadvertent failure to report, from $50 a day, with a maximum of $1,000, to $200 a day and a maximum of $5,000. He stated that, obviously, this is to provide motivation to file these reports in a timely manner, noting that he thinks everyone tries to do it conscientiously, but that they believe the penalty is a little stiff, and the Committee might reconsider that. He added that the penalties for willful failure to report, or fraudulent reports, are really severe, but their only concerns are regarding the penalties in subsection (2) for inadvertent failure to report.

Mr. Cadby maintained that the Department of Revenue, currently, can arbitrarily conduct audits, or "fishing expeditions" to locate unreported abandoned property, and indicated that this makes them a little nervous because there is no set criteria. He reported that, under Federal law, 12 USC 484 subsection (b), examiners may, at reasonable times and upon reasonable notice to a bank or other financial organization, review its records solely to insure compliance with applicable state unclaimed property or escheat laws, and upon reasonable cause to believe that the bank or financial organization has failed to comply with such laws. He indicated that a clause could be put in the bill to the effect that there must be reasonable cause for these kinds of audits, and added that, with these two amendments, they would support the bill.

Bob Pyfer, Senior Vice President, Montana Credit Unions League, stated that they support the bill, and reported that they had discussions with **Mr. Peterson** because of concerns that the dormancy periods might become more burdensome under this bill. He indicated that they have written assurance that there will not be any increased burdens in these regulations, that, in fact, they should be less burdensome. He then stated that their other concern had to do with Section 27 which, if interpreted literally, would require holders of property to go back ten years and report property not previously reported, due to the shortened dormancy periods. He noted that **Mr. Peterson** made it clear that the intent is to address changes in types of property, or new property to come under the law, and that they are satisfied with this explanation, as well. He then stated that they do feel that quadrupling the penalty for inadvertent failure to report may be a bit stiff, but, by and large, their concerns have been taken care of.

{Tape: 1; Side: A; Approx. Time: 10:42 a.m.; Comments: End of Tape 1, Side A.}

Mr. Pyfer indicated that they would like to offer a minor, technical amendment to line 27 on page 5 of the bill, which would change the reference to a "bank account" to read " an account in a financial organization", explaining that the term "bank account" is not a defined term in the Act, but the term "financial organization" is, referring the Committee to page 1, subsection (5), which defines a financial organization. He added that the provision on page 5 addresses tolling the dormancy period by a deposit or withdrawal to an account, which is the most common way to toll that period, and that this is critical to avoid unnecessary reporting, so they feel it is important to clarify that.

Informational Testimony:

John North, Montana Department of Environmental Quality, stated that they do not take a position either opposing or supporting the bill, but wanted to point out that a bill is being introduced in the House, at the request of the Department and the Governor, which would create a reclamation and rehabilitation account to be funded by civil penalties under the mining reclamation laws, and by abandoned operator's bonds received under the reclamation laws, amending the existing Unclaimed Property Act. He asked that the Committee consider amending SB 125 to insert a contingency clause which would help implement that legislation, adding that he would be willing to work with the Department of Revenue to develop the appropriate amendments.

Proponents' Testimony:

Joan Mandeville, Montana Telephone Association, stated that they would like to testify in support of the amendment proposed by the Department of Revenue regarding the exemption for cooperatives. She reported that their unclaimed patronage capital is currently being used for a wide variety of projects, including distance learning projects, and indicated that they continue to aggressively attempt to locate owners of unclaimed accounts, that a list is published at least once a year and sent out to their membership. She added that, if the Committee did not adopt that amendment, she would encourage them to work with some of the implementation questions regarding funds that have already been spent, and how they would tie into this Act.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE asked **Mr. Peterson** to explain his testimony regarding the requirement for advertising being changed from twice a year to once a year.

Mr. Peterson explained that current statute requires them to advertise twice a year, once shortly after they receive the May reports, and again after they receive the reports in November.

He indicated that this bill would change that requirement to once a year, by November 1st, after the last group of reports are filed. He added that they do anticipate continuing to advertise twice a year, if not more, and they also plan to start some campaigns to increase awareness of the property being held.

SEN. BROOKE asked when the penalties were last changed.

Mr. Peterson responded that he believes it was in the 1981 Act.

SEN. DELWYN GAGE referred to Section 10, subsection (2), on page 10, and asked **Mr. Peterson** what is meant by "or information concerning a traveler's check, money order, or similar instrument."

Mr. Peterson explained that, normally, they do not get a name associated with a traveler's check or money order, or similar instrument, that the issuing company more than likely does not have a name, and they have nothing that can be advertised. He added that property with a value of less than $50 is reported in the aggregate and, again, they do not have the names of the owners.

SEN. GAGE asked if those companies just report a total value of uncashed instruments, and that is all the information provided to the Department.

Mr. Peterson replied yes, that they receive a fair amount of property with no name associated with it because the holder's records were bad. He added that it is getting better as more companies become automated, and property is coming in with names and addresses.

CHAIRMAN DON HARGROVE pointed out that the Committee heard a lot of recommendations from **Mr. Cadby**, including a reference to Section 11, and also concerns regarding the penalties, and good cause for audits. He asked **Mr. Peterson** to comment on those recommendations.

Mr. Peterson indicated that he believes one of the primary purposes of the Uniform Unclaimed Property Act was to increase compliance, and to stiffen penalties and encourage holders to turn property over. He pointed out that, in a situation where a holder inadvertently does not report, their practice has been to waive penalties and interest, and they probably will continue to do that, but that they raised the penalty to $200 a day and a maximum of $5,000 for uniformity, noting that they are not particularly married to any amount.

CHAIRMAN HARGROVE asked what he meant by uniformity.

Mr. Peterson replied that it is uniformity with other states.

CHAIRMAN HARGROVE asked if it isn't compliance with Federal guidelines.

Mr. Peterson responded that is correct. He then indicated that Section 11 was omitted because they did not feel they have the ability, in the short term, to adjust their computer system to track the amount of interest that would be owed on accounts turned over under the 1995 Act. He added that, at some point down the road, they should be able to do that, but that this was the primary reason for leaving Section 11 out, and explained that the person who designed their computer program has left the Department, and they have no one else with expertise in that area.

CHAIRMAN HARGROVE asked if they continue to have 2 FTE in this function.

Mr. Peterson answered that, currently, that is all that is dedicated to this program, adding that they have a proposal in the Governor's budget to add an FTE, so that they can have people available to do searches for owners, as well as to make a more visible effort at locating owners. He added that two positions would be involved in the audit and enforcement areas to educate holders about unclaimed property laws and perform audits.

SEN. GAGE indicated that the amendment concerning cooperatives does not appear to fit the bill, that it refers to page 7, line 7.

Mr. Peterson acknowledged that it is incorrect and needs to be changed, that it should refer to page 5, line 7. **SEN. GAGE** corrected that to line 8. **Mr. Peterson** indicated that they will have to work on that amendment, adding that they are willing to work with the other proponents on their amendments, also.

Closing by Sponsor:

SEN. CHRISTIAENS remarked that this bill covers a lot of different territory in the area of abandoned property. He reiterated that it would require a vote of two-thirds of each House, and indicated that he will be watching the Committee's action on this bill to give him a better feel for how it may fare on the floor of the Senate because, if it does not receive two-thirds of the vote, he may want to bring it back to the Committee for further amendment.

He concluded, stating that he thinks the increase in penalties is meant as a motivation to file reports, and this bill brings this law into compliance with current standards. He added that he thinks this is an excellent piece of legislation and, with the amendments, deserves the Committee's favorable vote.

CHAIRMAN HARGROVE stated that the Committee will delay executive action on SB 125 in order to allow time for the Department and proponents to prepare the suggested amendments.

SEN. GAGE requested that **Mr. Peterson** supply the Committee with a copy of Section 11, which was omitted from the bill.

{Tape: 1; Side: B; Approx. Time: 11:01 a.m.; Comments: None.}

EXECUTIVE ACTION ON SB 19

Amendments: SB001902.atp

Discussion:

SEN. GAGE explained that the amendments (**EXHIBIT 5**), would provide that, in critical situations, the Budget Director may approve proposed changes however, before approval, the Budget Director would notify the Fiscal Analyst, who would determine if the Legislative Finance Committee should be contacted for their review of the proposal. He indicated that the Budget Director would be required to prepare a full report of the reasons for the action to be presented to the Legislative Finance Committee at their next meeting, adding that, in talking with the Fiscal Analyst, he was informed that this procedure is provided for in statute for other situations, and they felt it would work well in this case.

Motion/Vote: **SEN. GAGE's** motion to **ADOPT AMENDMENT SB001902.atp CARRIED UNANIMOUSLY**

Motion/Vote: **SEN. GAGE's** motion that **SB 19 DO PASS AS AMENDED CARRIED** with **SEN. THOMAS** voting **NO**

COMMITTEE DISCUSSION

SEN. THOMAS offered a motion that SB 119 do pass. **Mr. Niss** reported that he has received some rather extensive amendments to SB 119 and has not had a chance to review them. **SEN. THOMAS** withdrew his motion.

CHAIRMAN HARGROVE then suggested the Committee review SB 110 for executive action. **Mr. Niss** reported that he has also been presented with amendments to SB 110 that have not been reviewed.

CHAIRMAN HARGROVE discussed the procedures for confirmation of the Governor's Board appointments, and informed the Committee that the Committee Secretary is preparing forms for each of the Boards, which will contain the statute relative to each Board, and the names, addresses and telephone numbers of the appointees. He indicated that specific questions to be asked of the

SENATE STATE ADMIN.
EXHIBIT NO. 1
DATE 1-16-97
BILL NO. SB125

Income & Miscellaneous Tax Division
Abandoned Property Section
1995 Uniform Unclaimed Property Act
Comparison of Abandonment Periods

Property Type	Current Law	1995 Act
Traveler's Checks	15 years	15 years
Money Order	5 years	***7 years***
Stock or Other Equity Interest in a Business Association or Financial Organization	5 years	5 years
Debt of a Business Association or Financial Organization, Other than a Bearer Bond or an Original Issue Discount Bond	5 years	5 years
Demand, Savings, or Time Deposits	5 years	5 years
Money or Credits Owed to a Customer as a Result of a Retail Business Transaction	5 years	***3 years***
Gift Certificates	5 years	***3 years***
Life or Endowment Insurance Policy or an Annuity that has Matured or Terminated	5 years	***3 years***
Property Distributable by a Business Association or Financial Organization in a Course of Dissolution	5 years	***1 year***
Court Proceeds of a Class Action	5 years	***1 year***
Property Held by a Court, Government, Governmental Subdivision, Agency or Instrumentality	5 years	***1 year***
Wages or Other Compensation for Personal Services	5 years	***1 year***
Deposit or Refund Owed to a Subscriber by a Utility	5 years	***1 year***
Individual Retirement Account, Defined Benefit Plan, or other Account or Plan that is Qualified for Tax Deferral	5 years	***3 years***
All Other Property	5 years	5 years
Contents of Safe Deposit Boxes	5 years	5 years

(changes)

SENATE STATE ADMIN.
EXHIBIT NO. 2
DATE 1-16-97
BILL NO. SB125

January 15, 1997

To: Senate Committee on State Administration

Testimony in Support of Senate Bill 125 Uniform Unclaimed Property Act (1995)

My name is Robert E. Sullivan. I am a retired lawyer living in Missoula, Montana. From 1955 through 1978, I served as Dean of the University of Montana Law School. I have been a Commissioner on uniform laws representing the State of Montana for forty years, first appointed by Governor Hugo Aronson in 1957. The other Commissioners from Montana are Attorney General Joseph Mazurek, Supreme Court Justice James Nelson, Law School Dean E. Edwin Eck II, Alex Blewett of Great Falls and Gregory Petesch of the Legislative Council who serves as an Associate Commissioner.

The Uniform Laws Conference was founded in 1892 by representatives of seven states. Montana became a member in 1893 and since that time has enacted more than one hundred uniform and model acts promulgated by the Conference. Montana is among the top three states in the enactment of uniform and model acts. In 1983, Montana enacted the Unclaimed Property Act of 1981. It has been revised to include suggestions by the National Association of Unclaimed Property Administrators and the rules established by the United States Supreme Court case of *Delaware V. New York*, 113 S.Ct. 1550 (1993).

I am one of eleven Commissioners appointed by the Uniform Laws Conference to the drafting committee to revise the 1981 Unclaimed Property Act. During the two year drafting process, I have discussed the work of the committee with personnel of the Abandoned Property Division of the Montana Department of Revenue. The committee was also assisted by advisors from the National Association of Unclaimed Property Administrators and the American Bar Association. There were also observers from a wide range of interested parties including the American Bankers Association, the American Society of Corporate Secretaries, Travelers Express Company, National Abandoned Property Processing Corporation, Keane Tracers, National Retail Federation and the Investment Company Institute. All meetings and deliberations of the drafting committee were open to the public. Several drafts were circulated widely, and comments were solicited. A revised tentative draft was sent to all Commissioners and interested parties prior to the 1994 annual meeting of the Conference where it was read "line by line", discussed, debated and changed by the Commissioners sitting as a committee of the whole. In the interim before the next annual meeting, the committee met several times and prepared revised drafts. The final product, a draft for approval was sent to all Commissioners and interested parties ninety days before the 1995 annual meeting. The Conference, sitting as a committee of the whole again, considered "line by line" the draft for approval and accepted the exact language that was

submitted to and approved in a vote by states. Each state has one vote. The act was approved as the Unclaimed Property Act (1995) and recommended for enactment in all the states.

The Uniform Unclaimed Property Act 1995 (UUPA-1995) continues the policy that intangible personal property that is unclaimed is transferred to the State as a permanent custodian for its owners. The state keeps the property or the proceeds from its sale for its owners. The object of UUPA (1995) and the 1981 Act enacted in Montana is fairly simple. Its rules determine when eligible property is unclaimed. Once property may be identified as unclaimed, the holder is required to report that property to the state unclaimed property administrator. After the report is made, and notice to owners is formally attempted by the holder, the property is transferred to the unclaimed property administrator. The administrator once again attempts notice to owners. Cash goes into the state general fund. Non-cash is held for a period of time and then sold. The administrator maintains a fund from which owners can make claims for payment. A claims procedure is provided for owners to make their claims.

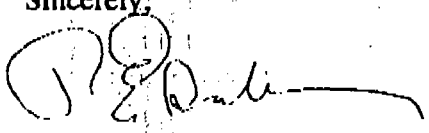
Since unclaimed property administration is an interstate problem, the Uniform Act provides the States with authority to work with each other and to cooperate in the collection and holding of unclaimed property. UUPA (1995) retains the basic objective. What does it update? The first issue it addresses is the jurisdiction issue. Holders and owners may be in different States (which is the principal justification for a uniform act on this subject). The basic rule as of UUPA (1981) is that the owner's State is the State entitled to custody over unclaimed property. If that State cannot be ascertained, the holder's State is entitled to custody. These rules respond to constitutional decisions prior to 1981. UUPA (1995) does not change the basic rule, but provides specific rules to meet the test of *Delaware v. New York*, 113 S.Ct. 1550, decided in 1993. That case dealt with interests in investment securities for which no owner's address could be ascertained.

UUPA (1995) more clearly specifies what constitutes unclaimed property. The general rule is: "Property is unclaimed if, for the applicable period of time set forth in the act the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property." The 1981 Uniform Act did not attempt to state a general rule. UUPA (1995) states a general rule with respect to dormancy charges for all types of unclaimed property. Dormancy charges are charges imposed by

holders for inactivity with respect to any property held. An example would be a specific charge for not depositing or withdrawing money from a bank account. The rule is that no dormancy charges can be levied against assets held unless there is a specific, enforceable contract between owner and holder for assessing such charges. "The amount of the deduction is limited to an amount that is not unconscionable." The earlier uniform acts did not apply this kind of rule generally to all kinds of unclaimed property. The rule was applied only to travelers checks, money orders, checks and drafts, and deposit accounts. In addition, there was no limitation on amount in the earlier uniform act. UUPA (1995) also limits heir finder agreements. There are other clarifications and adjustments to the provisions of the 1981 Act.

The Uniform Law Conference is a confederation of state commissioners on uniform laws. Its membership comprises 300 lawyers, those practicing in the public and private sector, judges of State and Federal courts and law professors. They are appointed by each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. They receive no compensation for their services. The constitution of the conference provides: "It is the duty of commissioners ... to seek introduction and enactment of uniform acts promulgated by the conference that are appropriate for their state". The Montana Commissioners on Uniform State Laws recommend that the 1997 Legislature enact the Uniform Unclaimed Property Act (1995).

Sincerely,



Robert E. Sullivan

SENATE STATE ADMIN.
EXHIBIT NO. 3
DATE 1-16-97
BILL NO. SB125

NAUPA

National Association of
Unclaimed Property Administrators

January 16, 1997

Senate Committee on State Administration
Testimony inSupport of Senate Bill #125
Uniform Unclaimed Property Act 1995

All states, including the District of Columbia, have adopted Unclaimed Property Statutes. While many of these state statutes have based their origins on the common law of escheats, each state has adopted some form of the Uniform Disposition of the Unclaimed Property Act. It is important to remember individual state laws are not the same and each state has modified its laws to meet its needs.

In 1954, The National Conference of Commissioners on Uniform State Laws promulgated the first uniform act in the area of unclaimed property. The commission was charged with standardizing state legal issues into a model or uniform act. In 1966, 1981, and most recently in 1995, the Commissioners adopted several changes in the Uniform Act to accommodate for Supreme Court rulings, as well as industry and states practices.

In 1992, the National Association of Unclaimed Property Administrators (NAUPA) requested that the Commissioners consider adopting changes in the 1981 Act. NAUPA saw this need due to numerous changes in states laws, industry practices and inconsistency between each state's legal standards. The Commission made significant changes to the 1981 Act which proved to both support the states unclaimed property programs as well as many business interests in this field. Certain provisions of the model act were presented and supported by NAUPA. While not all states agree with all provisions of this act or agree to adopt the 1995 Act in it entirety, NAUPA does support the uniformity of consistent state practices and uniformity of legal standards.

Sincerely,

William P. Johnson
NAUPA President

cc: NAUPA Executive Committee

SENATE STATE ADMIN.
EXHIBIT NO. 4
DATE 1-16-97
BILL NO. SB125

Amendments to SB125
first reading

Requested by the Department of Revenue
For the Committee on State Administration
Prepared by the Department of Revenue
January 15, 1997

1. Page 7, line 7
Following: avoid a tax penalty:
Insert: (new paragraph) (o) a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 15, Chapter 18, 5 years after the patronage refund became payable. Unclaimed patronage refunds are not subject to or governed by the provisions of [Sections 1 through 29] provided the rural electric or telephone cooperative uses them for educational purposes; and
(p)

REASON: The amendments restore an exemption from unclaimed property laws enacted in the 1993 Legislative Assembly for abandoned patronage refunds owed to members of a rural electric or telephone cooperative. In order to obtain the exemption the rural electric or telephone cooperative must use the abandoned patronage refund for educational purposes. The elimination of this exemption in SB125 was an oversight by the Department of Revenue.

MONTANA SENATE
1997 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL DATE 1-16-97

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
DEL GAGE	✓		
FRED THOMAS	✓		
BILL WILSON	✓		
KEN MESAROS, VICE CHAIRMAN	✓		
DON HARGROVE, CHAIRMAN	✓		

SEN:1997
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CS-09

DATE 1-16-97

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: SB125, SB131

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Mary "Marty" Shippen		SB125		
Rick Knight	School Dist 38	SB131		
John Loucks	School Admin. of Mont.	SB131		
Bob Pyfer	MT Credit Unions League	SB125	X	
Jeff Nagemer	DNRC	SB131		
Michael Wellenstein	Dept of Rev.	SB125	Y	
Neil Peterson	DOR	SB125	X	
Dot Spurlock	DOR	SB125	X	
John North	DEQ	SB125		
JOHN CADBY	MT BANKERS ASSN.	SB125	X	
Keith L. Colbo	MIB	SB125	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on January 23, 1997, at 10:00 a.m., in Room 331

ROLL CALL

Members Present:
Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Delwyn Gage (R)

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:		HB 48, 1/20/97; HB 26, 1/20/97
	Executive Action:	SB 42 DPAA; SB 88 DPAA; SB 104 DPAA; SB 125 DPAA; SB 152 DP; HB 26 BCI; HB 48 BCI

HEARING ON HB 48

Sponsor: **REP. JOE QUILICI, HD 36, BUTTE**

Proponents: **Gary Hindoien, Assistant Adjutant General, Air National Guard, State of Montana Department of Military Affairs**

Opponents: **None**

Opening Statement by Sponsor:

REP. JOE QUILICI, HD 36, BUTTE, stated that HB 48 is a simple bill, that it will bring State law into conformance with Federal law regarding the retirement age for Montana National Guard

appearance. She added that she tried to devise a method to involve the Legislative Finance Committee but that they really do not have the power or authority that the Legislature does.

SEN. BROOKE then stated that she does not want to kill the bill, that she thinks it is a good idea and will go forward, but that she wanted to voice her concerns. She referred to page 1, line 26, and pointed out that the Governor has final approval authority, noting that she understands why that needs to be there, but it does give that office holder an incredible amount of power to move things around. She reiterated that she wanted people to be aware, and noted that, as Legislators, they need to consider that.

SEN. MESAROS indicated he appreciates her comments and concerns, but stated that he believes in order to have the flexibility to deal with those projects over the interim, as well as on-going projects, he would like to see more involvement, and the ability to be more responsive.

CHAIRMAN HARGROVE noted that he thinks they all share her concerns, and indicated that, from his standpoint, as a Legislator, he often finds conflicts in his own philosophy, that it applies one place, but does not in another. He added that the business of allowing government to work is one thing, and another is recognizing the separation of powers, and what the Legislature should do, can do, and can not do. He noted that, in this case, he finds himself in a little bit of conflict, but that testimony was that this is the way it is done, and no one really has the background or expertise to stop the process and go in and look at it.

Vote: The motion that **SB 88 DO PASS AS AMENDED CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 125

Amendments: SB012501.adn (**EXHIBIT 12**)

Discussion:

Mr. Niss reported that he asked **Neil Peterson, Montana Department of Revenue** to be available to answer questions, noting that they have discovered a small change that needs to be made in paragraph 3 of the amendment, which can be done orally. He then explained that paragraphs 1, 3 and 5 address an exception to the Unclaimed Property Act for patronage refunds from rural electric or telephone cooperatives which are used for educational purposes, noting that **Mr. Peterson** could perhaps answer any questions the Committee may have about why the rural electric and telephone cooperatives are allowed this exemption. He then pointed out that the language on the last line of paragraph 3, reads "on the date", and that it should be changed to read "five years from".

CHAIRMAN HARGROVE asked **Mr. Peterson** to explain the reason for this exemption.

Neil Peterson, Department of Revenue, explained that the 1993 Legislature granted this exemption from the Uniform Unclaimed Property Act, for rural electric and telephone cooperatives, as long as the money is used for educational purposes, that it was inadvertently omitted when SB 125 was drafted, and this amendment will restore that exemption.

Mr. Niss explained that paragraph 6 of the amendment reduces the daily penalty for failure to report abandoned property from $200 to $100, and the maximum penalty from $5,000 to $2,500. He indicated that paragraph 8 of the amendments will coordinate the provisions of this bill with the provisions of HB 284, which provides that monies on deposit as reclamation and other bonds, for mining purposes, do not forfeit, that they go into an account of the State Special Revenue Fund for use by that particular agency. He noted that this paragraph of the amendment would provide that those bonds or cash deposits with the Department of Environmental Quality are excepted from the provisions of the Uniform Unclaimed Property Act.

Motion/Vote: **SEN. BROOKE** moved that **SB012501.adn BE ADOPTED.** The motion **CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. MESAROS** moved that **SB 125 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 152

Amendments: None

Motion/Vote: **SEN. MESAROS** moved that **SB 152 DO PASS.** The motion **CARRIED UNANIMOUSLY.**

COMMITTEE DISCUSSION SB 153

Mr. Niss explained that the first paragraph of the amendments substitutes one "Whereas" clause for the existing "Whereas" clause on lines 14 and 15, noting that the sponsor requested this amendment. He continued that the second paragraph of the amendments adds the initiative and the referendum as two additional methods by which Federal mandates can be rejected.

CHAIRMAN HARGROVE asked **Mr. Niss** to give him some philosophy behind the "Whereas" clauses, asking if they are merely assumptions.

Mr. Niss stated that is very much the case, that "Whereas" clauses are placed above the enacted line on the bill, and are not part of the law. He indicated that they are introductory information from the sponsor of the bill, and signify the sponsor's ideas, that they are not reflective of the opinions of

SENATE STATE ADMIN.
EXHIBIT NO. 12
DATE 1-23-97
BILL NO. SB125

Amendments to Senate Bill No. 125
First Reading Copy

Requested by Sen. Gage
For the Committee on State Administration

Prepared by David S. Niss
January 22, 1997

1. Page 3, line 24.
Strike: "Property"
Insert: "Except as provided in subsection (6), property"

2. Page 5, line 8.
Strike: "and"

3. Page 5.
Following: line 8
Insert: "(o) a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, on the date of distribution; and"

Renumber: subsequent subsection

4. Page 5, line 27.
Strike: "a bank account"
Insert: "an account in a financial organization"

5. Page 6.
Following: line 5
Insert: "(6) The presumption provided in subsection (1) does not apply to unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes."

6. Page 18, line 10.
Strike: "$200"
Insert: "$100"

7. Page 18, line 11.
Strike: "$5,000"
Insert: "$2,500"

8. Page 21.
Following: line 4
Insert: "NEW SECTION. **Section 32. Coordination instruction.** If House Bill No. 284 is passed and approved amending 82-4-241, 82-4-311, and 82-4-424 to provide that unclaimed funds or bonds are to be deposited into an account in the state special revenue fund, then [section 3(1) of the first reading copy of this act] is amended to insert after "Except as provided in" the words "82-4-241, 82-4-311, 82-4-424, and"

SENATE STANDING COMMITTEE REPORT

January 23, 1997

MR. PRESIDENT:
We, your committee on State Administration having had under consideration SB 125 (first reading copy -- white), respectfully report that SB 125 be amended as follows and as so amended do pass.

Signed: Don Hargrove
Senator Don Hargrove, Chair

That such amendments read:

1. Page 3, line 24.
Strike: "Property"
Insert: "Except as provided in subsection (6), property"

2. Page 5, line 8.
Strike: "and"

3. Page 5.
Following: line 8
Insert: "(o) a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date; and"

Renumber: subsequent subsection

4. Page 5, line 27.
Strike: "a bank account"
Insert: "an account in a financial organization"

5. Page 6.
Following: line 5
Insert: "(6) The presumption provided in subsection (1) does not apply to unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes."

6. Page 18, line 10.
Strike: "$200"
Insert: "$100"

7. Page 18, line 11.
Strike: "$5,000"
Insert: "$2,500"

Amd. Coord.
Sec. of Senate

Renumber: subsequent sections

8. Page 21.
Following: line 4
Insert: "NEW SECTION. **Section 32. Coordination instruction.** If House Bill No. 284 is passed and approved amending 82-4-241, 82-4-311, and 82-4-424 to provide that unclaimed funds or bonds are to be deposited into an account in the state special revenue fund, then [section 3(1) of the first reading copy of this act] is amended to insert after "Except as provided in" the words "82-4-241, 82-4-311, 82-4-424, and"
Renumber: subsequent sections

-END-

MONTANA SENATE
1997 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL DATE 1-23-97

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
DEL GAGE			✓
FRED THOMAS	✓		
BILL WILSON	✓		
KEN MESAROS, VICE CHAIRMAN	✓		
DON HARGROVE, CHAIRMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

DATE JAN 23, 1997

SENATE COMMITTEE ON ~~STATE~~ ADMINISTRATION

BILLS BEING HEARD TODAY: HB-48, HB 26

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
GARY HINDOIEN	DEPT MILITARY AFFAIRS	HB-48	X	
Joe Kerwin	Sec of State	HB26	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Chase Hibbard, on February 5, 1997, at 8:00 a.m., in Room 437.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Robert R. Story, Jr., Vice Chairman (Majority) (R)
Rep. Robert R. "Bob" Ream, Vice Chairman (Minority) (D)
Rep. Peggy Arnott (R)
Rep. Paul Bankhead (R)
Rep. John C. Bohlinger (R)
Rep. Bill Carey (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. Marian W. Hanson (R)
Rep. Hal Harper (D)
Rep. Dan W. Harrington (D)
Rep. Rick Jore (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. John "Sam" Rose (R)
Rep. William M. "Bill" Ryan (D)
Rep. Richard D. Simpkins (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Jack Wells (R)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Services Division
Donna Grace, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 100 (1/28)
SB 125 (1/30)
HB 403 (2/3)

Executive Action: HB 126 - Table
HB 308 - Do Pass as Amended
SB 125 - Concur

HEARING ON SB 100

Opening Statement by Sponsor:

Sen. Tom Beck, Senate District 20, opened the hearing on SB 100, a bill which would revise the method of taxing forest land. *{Tape: 1; Side: A; Approx. Time Count: 1.2; Comments: .}*

Proponents' Testimony:

Randy Piearson, Department of Revenue. *{Tape: 1; Side: A; Approx. Time Count: 3.4; Comments: .}*

Don Allen, Montana Wood Products, Inc. *{Tape: 1; Side: A; Approx. Time Count: 5.9; Comments: .}*

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 9.7; Comments: .}

Closing by Sponsor:

Sen. Beck closed the hearing. *{Tape: 1; Side: A; Approx. Time Count: 37.3; Comments: .}*

HEARING ON SB 125

Opening Statement by Sponsor:

Sen. Chris Christiaens, Senate District 23, presented the bill which would provide for changes in the Uniform Unclaimed Property Act. *{Tape: 1; Side: A; Approx. Time Count: 39.1; Comments: Sen. Christiaens opening statement is continued on Tape 1B.}*

Proponents' Testimony:

Neil Peterson, Department of Revenue. **EXHIBIT 1, 2 and 3.** *{Tape: 1; Side: B; Approx. Time Count: 0.6; Comments: .}*

Bob Pyfer, Montana Credit Union League. *{Tape: 1; Side: B; Approx. Time Count: 17.9; Comments: .}*

Tom Hopgood, American Council of Life Insurance. *{Tape: 1; Side: B; Approx. Time Count: 18.7; Comments: .}*

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 22.0; Comments: Questions are continued on Tape 2A.}

Closing by Sponsor:

Sen. Christiaens closed the hearing. *{Tape: 2; Side: A; Approx. Time Count: 5.0; Comments: .}*

HEARING ON HB 403

Opening Statement by Sponsor:

Rep. Emily Swanson, House District 30, opened the hearing on HB 403, a bill which would make health insurance premiums fully deductible. *{Tape: 2; Side: A; Approx. Time Count: 8.1; Comments: .}*

Proponents' Testimony:

John Youngberg, Montana Farm Bureau. *{Tape: 2; Side: A; Approx. Time Count: 10.1; Comments: .}*

Candace Torgerson, Women in Farm Economics. *{Tape: 2; Side: A; Approx. Time Count: 12.8; Comments: .}*

Riley Johnson, American Federation of Independent Business. *{Tape: 2; Side: A; Approx. Time Count: 14.5; Comments: .}*

Opponents' Testimony:

None.

Informational Testimony:

Bob Turner, Department of Revenue. *{Tape: 2; Side: A; Approx. Time Count: 15/2; Comments: .}*

Questions From Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Count: 16.0; Comments: .}

EXECUTIVE ACTION ON SB 125

Motion:

Rep. Simpkins moved that SB 125 be concurred in. *{Tape: 2; Side: B; Approx. Time Count: 30.0; Comments: .}*

Motion:

Rep. Arnott moved a conceptual amendment. Motion withdrawn. *{Tape: 2; Side: B; Approx. Time Count: 33.0; Comments: .}*

Vote:

On a roll call vote the concurred in motion passed, 17 - 3, with Reps. Arnott, Jore and Ryan voting no. *{Tape: 3; Side: A; Approx. Time Count: 2.2; Comments: .}*

{Tape: 3; Side: A; Approx. Time Count: 3.3; Comments: Adjourn.}

EXHIBIT 1
DATE 2/5/95
HB SB 125

Income & Miscellaneous Tax Division
Abandoned Property Section
1995 Uniform Unclaimed Property Act
Comparison of Abandonment Periods

Property Type	Current Law	1995 Act
Traveler's Checks	15 years	15 years
Money Order	5 years	***7 years***
Stock or Other Equity Interest in a Business Association or Financial Organization	5 years	5 years
Debt of a Business Association or Financial Organization, Other than a Bearer Bond or an Original Issue Discount Bond	5 years	5 years
Demand, Savings, or Time Deposits	5 years	5 years
Money or Credits Owed to a Customer as a Result of a Retail Business Transaction	5 years	***3 years***
Gift Certificates	5 years	***3 years***
Life or Endowment Insurance Policy or an Annuity that has Matured or Terminated	5 years	***3 years***
Property Distributable by a Business Association or Financial Organization in a Course of Dissolution	5 years	***1 year***
Court Proceeds of a Class Action	5 years	***1 year***
Property Held by a Court, Government, Governmental Subdivision, Agency or Instrumentality	5 years	***1 year***
Wages or Other Compensation for Personal Services	5 years	***1 year***
Deposit or Refund Owed to a Subscriber by a Utility	5 years	***1 year***
Individual Retirement Account, Defined Benefit Plan, or other Account or Plan that is Qualified for Tax Deferral	5 years	***3 years***
All Other Property	5 years	5 years
Contents of Safe Deposit Boxes	5 years	5 years

(changes)

1 - Neal Peterson

EXHIBIT 2
DATE 2/5/95
BB SB 125

NAUPA

National Association of Unclaimed Property Administrators

January 16, 1997

Senate Committee on State Administration
Testimony inSupport of Senate Bill #125
Uniform Unclaimed Property Act 1995

All states, including the District of Columbia, have adopted Unclaimed Property Statutes. While many of these state statutes have based their origins on the common law of escheats, each state has adopted some form of the Uniform Disposition of the Unclaimed Property Act. It is important to remember individual state laws are not the same and each state has modified its laws to meet its needs.

In 1954, The National Conference of Commissioners on Uniform State Laws promulgated the first uniform act in the area of unclaimed property. The commission was charged with standardizing state legal issues into a model or uniform act. In 1966, 1981, and most recently in 1995, the Commissioners adopted several changes in the Uniform Act to accommodate for Supreme Court rulings, as well as industry and states practices.

In 1992, the National Association of Unclaimed Property Administrators (NAUPA) requested that the Commissioners consider adopting changes in the 1981 Act. NAUPA saw this need due to numerous changes in states laws, industry practices and inconsistency between each state's legal standards. The Commission made significant changes to the 1981 Act which proved to both support the states unclaimed property programs as well as many business interests in this field. Certain provisions of the model act were presented and supported by NAUPA. While not all states agree with all provisions of this act or agree to adopt the 1995 Act in it entirety, NAUPA does support the uniformity of consistent state practices and uniformity of legal standards.

Sincerely,

William P. Johnson
NAUPA President

cc: NAUPA Executive Committee

Post-it Fax Note 7672

To Neil Peterson
Company Dept. of Revenue
Location Abandoned Property Division
Fax # (406) 444-4998

No. of Pages 3 Today's Date 1-15 Time

From
Company
Location Dept. Charge
Fax # Telephone #
Original Deposition ☐ Delivery ☐ Return ☐ Call for pickup

EXHIBIT 3
DATE 2/5/95
SB 125

January 15, 1997

To: Senate Committee on State Administration

Testimony in Support of Senate Bill 125 Uniform Unclaimed Property Act (1995)

My name is Robert E. Sullivan. I am a retired lawyer living in Missoula, Montana. From 1955 through 1978, I served as Dean of the University of Montana Law School. I have been a Commissioner on uniform laws representing the State of Montana for forty years, first appointed by Governor Hugo Aronson in 1957. The other Commissioners from Montana are Attorney General Joseph Mazurek, Supreme Court Justice James Nelson, Law School Dean E. Edwin Eck II, Alex Blewett of Great Falls and Gregory Petesch of the Legislative Council who serves as an Associate Commissioner.

The Uniform Laws Conference was founded in 1892 by representatives of seven states. Montana became a member in 1893 and since that time has enacted more than one hundred uniform and model acts promulgated by the Conference. Montana is among the top three states in the enactment of uniform and model acts. In 1983, Montana enacted the Unclaimed Property Act of 1981. It has been revised to include suggestions by the National Association of Unclaimed Property Administrators and the rules established by the United States Supreme Court case of *Delaware V. New York*, 113 S.Ct. 1550 (1993).

I am one of eleven Commissioners appointed by the Uniform Laws Conference to the drafting committee to revise the 1981 Unclaimed Property Act. During the two year drafting process, I have discussed the work of the committee with personnel of the Abandoned Property Division of the Montana Department of Revenue. The committee was also assisted by advisors from the National Association of Unclaimed Property Administrators and the American Bar Association. There were also observers from a wide range of interested parties including the American Bankers Association, the American Society of Corporate Secretaries, Travelers Express Company, National Abandoned Property Processing Corporation, Keane Tracers, National Retail Federation and the Investment Company Institute. All meetings and deliberations of the drafting committee were open to the public. Several drafts were circulated widely, and comments were solicited. A revised tentative draft was sent to all Commissioners and interested parties prior to the 1994 annual meeting of the Conference where it was read "line by line", discussed, debated and changed by the Commissioners sitting as a committee of the whole. In the interim before the next annual meeting, the committee met several times and prepared revised drafts. The final product, a draft for approval was sent to all Commissioners and interested parties ninety days before the 1995 annual meeting. The Conference, sitting as a committee of the whole again, considered "line by line" the draft for approval and accepted the exact language that was

submitted to and approved in a vote by states. Each state has one vote. The act was approved as the Unclaimed Property Act (1995) and recommended for enactment in all the states.

The Uniform Unclaimed Property Act 1995 (UUPA-1995) continues the policy that intangible personal property that is unclaimed is transferred to the State as a permanent custodian for its owners. The state keeps the property or the proceeds from its sale for its owners. The object of UUPA (1995) and the 1981 Act enacted in Montana is fairly simple. Its rules determine when eligible property is unclaimed. Once property may be identified as unclaimed, the holder is required to report that property to the state unclaimed property administrator. After the report is made, and notice to owners is formally attempted by the holder, the property is transferred to the unclaimed property administrator. The administrator once again attempts notice to owners. Cash goes into the state general fund. Non-cash is held for a period of time and then sold. The administrator maintains a fund from which owners can make claims for payment. A claims procedure is provided for owners to make their claims.

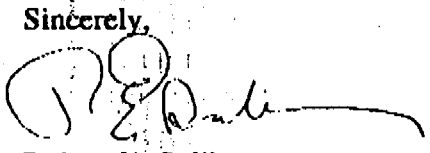
Since unclaimed property administration is an interstate problem, the Uniform Act provides the States with authority to work with each other and to cooperate in the collection and holding of unclaimed property. UUPA (1995) retains the basic objective. What does it update? The first issue it addresses is the jurisdiction issue. Holders and owners may be in different States (which is the principal justification for a uniform act on this subject). The basic rule as of UUPA (1981) is that the owner's State is the State entitled to custody over unclaimed property. If that State cannot be ascertained, the holder's State is entitled to custody. These rules respond to constitutional decisions prior to 1981. UUPA (1995) does not change the basic rule, but provides specific rules to meet the test of *Delaware v. New York*, 113 S.Ct. 1550, decided in 1993. That case dealt with interests in investment securities for which no owner's address could be ascertained.

UUPA (1995) more clearly specifies what constitutes unclaimed property. The general rule is: "Property is unclaimed if, for the applicable period of time set forth in the act the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property." The 1981 Uniform Act did not attempt to state a general rule. UUPA (1995) states a general rule with respect to dormancy charges for all types of unclaimed property. Dormancy charges are charges imposed by

holders for inactivity with respect to any property held. An example would be a specific charge for not depositing or withdrawing money from a bank account. The rule is that no dormancy charges can be levied against assets held unless there is a specific, enforceable contract between owner and holder for assessing such charges. "The amount of the deduction is limited to an amount that is not unconscionable." The earlier uniform acts did not apply this kind of rule generally to all kinds of unclaimed property. The rule was applied only to travelers checks, money orders, checks and drafts, and deposit accounts. In addition, there was no limitation on amount in the earlier uniform act. UUPA (1995) also limits heir finder agreements. There are other clarifications and adjustments to the provisions of the 1981 Act.

The Uniform Law Conference is a confederation of state commissioners on uniform laws. Its membership comprises 300 lawyers, those practicing in the public and private sector, judges of State and Federal courts and law professors. They are appointed by each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. They receive no compensation for their services. The constitution of the conference provides: "It is the duty of commissioners ... to seek introduction and enactment of uniform acts promulgated by the conference that are appropriate for their state". The Montana Commissioners on Uniform State Laws recommend that the 1997 Legislature enact the Uniform Unclaimed Property Act (1995).

Sincerely,



Robert E. Sullivan

HOUSE STANDING COMMITTEE REPORT

February 5, 1997

Mr. Speaker: We, the committee on **Taxation** report that **Senate Bill 125** (third reading copy -- blue) **be concurred in**.

Signed: _____

Chase Hibbard, Chair

Carried by: Rep. Simpkins

Committee Vote:
Yes 17, No 3.

2/5

271246SC.Hgd

HOUSE TAXATION COMMITTEE

ROLL CALL

DATE OF MEETING: Feb. 5, 1997

Name	Present	Absent	Excused
Rep. Peggy Arnott	✓		
Rep. Paul Bankhead	✓		
Rep. John Bohlinger	✓		
Rep. Bill Carey	✓		
Rep. Alvin Ellis, Jr.	✓		
Rep. Marian Hanson	✓		
Rep. Hal Harper	✓		
Rep. Dan Harrington	✓		
Rep. Rick Jore	✓		
Rep. Scott J. Orr	✓		
Rep. Bob Raney	✓		
Rep. Bob Ream	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Robert Story	✓		
Rep. Richard Simpkins	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Jack Wells	✓		
Chairman Chase Hibbard	✓		

HOUSE TAXATION COMMITTEE
ROLL CALL VOTE

DATE OF MEETING: 2/5/97

BILL NO. SB 125

MOTION: Simpkins do pass

Name	Yes	No	Comment
Rep. Bob Story			
Rep. Scott Orr			
Rep. Bill Ryan			
Rep. Peggy Arnott			
Rep. Bill Carey			
Rep. Sam Rose			
Rep. Jack Wells			
Rep. Dan Harrington			
Rep. Alvin Ellis			
Rep. Rick Jore			
Rep. Dick Simpkins			
Rep. Paul Bankhead			
Rep. John Bohlinger			
Rep. Emily Swanson			
Rep. Lila Taylor			
Rep. Marian Hanson			
Rep. Hal Harper			
Rep. Bob Raney			
Rep. Bob Ream			
Chairman Chase Hibbard			

Voice passed

Jore Arnott Bryson

17-3

VISITOR REGISTER

HOUSE TAXATION COMMITTEE

DATE: 2/5/97

BILL NO: SB 125 SPONSOR: Sen. Christiaens

NAME AND ADDRESS (PLEASE PRINT)	REPRESENTING	TYPE OF WITNESS		
		Informational	Support	Oppose
Neil Peterson	DOR		X	
Michael Wellenstein	Justice Dept		X	
Bob Ryker	MT Credit Unions League		X	
Tom Hopgood	American Council of Life Ins.		✓	

Please leave prepared testimony with secretary.
Witness statement forms are available if you care to submit written testimony.